

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed December 29, 2006 ("Office Action"). At the time of the Office Action, Claims 1-23 were pending in the application. Applicant thanks the Examiner for allowing Claims 13-16. In the Office Action, the Examiner rejects Claims 1-3, 6-9, 12, 17-19, 22 and 23 and objects to Claims 4, 5, 10, 11, 20 and 21. Applicant amends Claims 1, 7, 17, and 23 and cancels Claims 4, 10, and 20 without prejudice or disclaimer. Applicant does not admit that these amendments were necessary as a result of any rejections or prior art references.

Claim Rejections - 35 U.S.C. § 101

The Examiner rejects Claims 17-22 under U.S.C. 101 because the claimed invention is purportedly directed to non-statutory subject matter. Applicant respectfully traverses this rejection and requests reconsideration and allowance of Claims 17-19 and 21-22.

At the outset, Applicant notes the Examiner's acknowledgement that software is a "functional descriptive material." The M.P.E.P. states that "functional descriptive material consists of data structures and computer programs which impart functionality when employed as a computer component." M.P.E.P. § 2106.01. "When functional descriptive material [*i.e.*, computer programs, according to above-cited portion of the M.P.E.P.] ***is recorded on some computer-readable medium***, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized." *Id.* (emphasis added). *See also, In re Beauregard*, 53 F.3d 1583 (Fed. Cir. 1995). To the extent that certain of Applicants' claims are directed to software, this portion of the M.P.E.P. makes clear that the M.P.E.P. contemplates and, in fact, authorizes claims directed to software embodied in a computer-readable medium and operable to perform certain functions. For example, amended Claim 17 is directed to "software" that is "embodied in a computer readable medium and when executed operable to" perform certain functions recited in the claim, which according to the M.P.E.P. is statutory subject matter. The only way to define such software is by reciting limitations in the body of the claim that specify what the software, when executed, is operable to perform. In addition, M.P.E.P. § 2106(V)(A)(2), although directed to compliance with 35 U.S.C. § 112, second paragraph, states that "***Applicants should be encouraged to functionally define the steps the computer will perform rather than simply reciting source or object code***

instructions.” (emphasis added). The manner in which Applicants have drafted these claims is clearly contemplated and encouraged by the M.P.E.P. For at least these reasons, Applicant respectfully submits that Claims 17-22 are directed to statutory subject matter.

Claim Rejections - 35 U.S.C. § 102

The Examiner rejects Claims 1-3, 6-9, 12 and 23 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,977,542 B2 issued to Ganeshan, et al. (“*Ganeshan*”). Claims 4-5, 10-11 and 20-21 are objected to as being dependent upon a rejected base claim, but the Examiner indicates that they would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Amended Claim 1 incorporates the elements of Claim 4, as suggested by the Examiner. Amended Claim 7 incorporates the elements of Claim 10, as suggested by the Examiner. Amended Claim 23 incorporates various elements of Claim 4 as well. Applicant respectfully requests reconsideration and allowance of Claims 1-3, 5-9, 11-12 and 23.

Claim Rejections - 35 U.S.C. § 103

The Examiner rejects Claims 17-19 and 22 under 35 U.S.C. 103(a) as being unpatentable over *Ganeshan*, in view of U.S. Patent No. 6,538,833 B2 issued to Choi (“*Choi*”). Claims 4-5, 10-11 and 20-21 are objected to as being dependent upon a rejected base claim, but the Examiner indicates that they would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Amended Claim 17 incorporates the elements of Claim 20, as suggested by the Examiner. Applicant respectfully requests reconsideration and allowance of Claims 17-19 and 21-22.

Allowable Subject Matter

Applicant thanks the Examiner for the indication that Claims 13-16 are allowable.

CONCLUSION

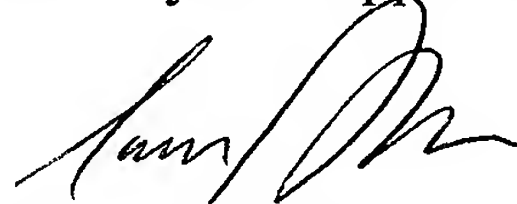
Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Samir A. Bhavsar, Attorney for Applicant, at the Examiner's convenience at (214) 953-6581.

Although no fees are believed due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Date: February 23, 2007

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